IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

OP.No. 4797 of 1996(U)

PETITIONER:

T.C.JOSE, NOW WORKING AS ASST. ENGINEER(CIVIL)
STATE ELECTRICITY BOARD, KAP SCHEME,
THARIYODU P.O., WAYANAD.

BY ADV. SRI.M.K.DILEEP KUMAR
SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN

RESPONDENTS:
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1. **THE KERALA STATE ELECTRICITY BOARD**
REP.BY ITS SECRETARY, VYDYUTHIBHAVANAM,
PATTOM PALACE P.O.,
THIRUVANANTHAPURAM.

2. **CHIEF ENGINEER (CIVIL), KERALA STATE**
ELECTRICITY BOARD, VYDYUTHIBHAVANAM,
PATTOM PALACE P.O., THIRUVANANTHAPURAM.

3. **R.BALAKRISHNAN NAIR, ENQUIRY OFFICER,**
RETD., CHIEF ENGINEER,
KERALA STATE ELECTRICITY BOARD,
T.C. 4/1072, AMBALAMUKKU,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.V.KUNHIKRISHNAN
SRI.C.RAGHAVAN, SC, KSEB
SRI.A.SUDHI VASUDEVAN, SC, KSEB
SRI.R.C.K.KARUNAKARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.4797/1996

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE LEAVE APPLICATION FILED BY THE PETITIONER.

EXT.P2:- COPY OF THE COMMUNICATION SENT BY 2ND RESPONDENT DT. 3.8.83.

EXT.P3:- COPY OF THE LETTER SENT BY THE PETITIONER TO THE 2ND RESPONDENT ENCLOSING LEAVE APPLICATION DT. 15.8.83.

EXT.P4:- COPY OF THE LEAVE APPLICATION ENCLOSED ALONGWITH EXT.P3 DT. 15.8.83.

EXT.P5:- COPY OF THE ENQUIRY REPORT SUBMITTED BY 3RD RESPONDENT DT. 9.5.85.

EXT.P6:- COPY OF THE ORDER PASSED BY THE 2ND RESPONDENT DT. 1.12.87.

EXT.P7:- COPY OF THE APPEAL SUBMITTED BEFORE THE BOARD BY THE PETITIONER DT. 2.2.92.

EXT.P8:- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN OP. 7504 /94 DT.21.4.95.

EXT.P9:- COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE FULL BOARD IN SUPPORT OF EXT.P7. DT. 3.11.95.

EXT.P10:- COPY OF THE ORDER PASSED BY THE 1ST RESPONDENT DT. 4.1.96.

EXT.P11:- COPY OF THE LEAVE APPLICATION DT. 22.11.76 SUBMITTED BY THE PETITIONER.

EXT.P12:- COPY OF THE COMMUNICATION DT. 21.12.76 ISSUED BY THE CHIEF ENGINEER (CIVIL) ON BEHALF OF THE 1ST RESPONDENT.

/TRUE COPY/

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Thottathil B. Radhakrishnan, J.

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O.P.No.4797 of 1996

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Dated this the 5th day of June, 2007.

JUDGMENT

Petitioner was an employee of the Kerala State Electricity Board. He was found guilty of having overstayed a leave period. Leave originally availed, was utilized by him for foreign service, that means, outside the service of the Electricity Board. By Ext.P2, he was intimated that his application for grant of leave was not sanctioned and that he had not executed any indemnity bond to clear liabilities outstanding against him, which may be found later. Thereupon, the petitioner made Ext.P3, whereby he sought for two more years' leave. There is nothing on record to show that the said leave application was allowed.

2. The competent disciplinary authority ordered an enquiry. The petitioner did not place any written statement of defence, either before or after the commencement of the domestic enquiry. The report of

the enquiry officer found the petitioner guilty of the charges. The disciplinary authority imposed the punishment of removal from service. After two rounds of writ petitions before this Court, the appeal of the petitioner was decided upon by the Board and it was ultimately decided that the punishment imposed on him be reduced. Accordingly, he was demoted from the rank of Assistant Executive Engineer to that of Assistant Engineer. It is this decision that is under challenge.

3. Learned counsel for the petitioner urged that, going by the enquiry report, it can be seen that it is a matter of practice in the service of the Electricity Board to take leisurely decisions on applications for leave and of employees proceeding to enjoy leave without any order sanctioning leave. It is further urged that the gravity of the disciplinary count is not one, which ought to have invited him with the penalty of demotion and the punishment inflicted is grossly disproportionate to the proved charges. It is pointed out by the learned counsel for the petitioner that it

was only as per Ext.P2, that the petitioner knew that the leave applied for by him was not granted and therefore, he could not have been found guilty in the disciplinary proceedings.

4. As I have already noticed above, the petitioner did not place any written statement of defence, either before or during the enquiry proceedings. All that he did was to place his case before the Board in the form of an appeal. Whatever that be, it being the admitted situation that the petitioner does not have any material with him to show that the leave applied for by him was sanctioned, it is unacceptable of the delinquent to contend that he came to know that the leave was not sanctioned only on the basis of Ext.P2 communication. This is because leave can be enjoyed only on being granted. This is the law. The direction in Ext.P2 to rejoin duty is also of no consequence in the situation, because all that is stated in Ext.P2 is that his leave was not sanctioned and he cannot apply for further leave. The practice in

the Board, as stated to be noticed by the enquiry officer, also does not lead to a finding that the petitioner has been illegally found to be guilty of the charges against him.

5. Coming to the question of proportionality of punishment, in considering the question, the pros and cons of his demotion vis-a-vis what he would have enjoyed had he continued in service is, in my view, a relevant fact. It is the admitted situation that, while the petitioner was absenting from the service of the Board, he was employed elsewhere with an institution M/s.Kalpaka Construction and Engineering Co.(Pvt.)Ltd., Madras. Obviously, he would have drawn remuneration for his service in that organisation. Therefore, the demotion, resulting out of his unauthorised absence, does not really make much of a difference, having regard to the totality of the facts and circumstances. Not only that, as has been noticed by the Board in the impugned appellate order, the quality of service expected of an Assistant Executive

Engineer was that he should not have absented from service. That view is necessarily fortified by the fact that the category of an Assistant Executive Engineer is a supervisory category.

For the foregoing reasons, I do not find any ground to interfere with the impugned action. Writ petition fails. The same is dismissed. No costs.

Thottathil B.Radhakrishnan,
Judge.

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Thottathil B. Radhakrishnan, J.

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O.P.No.4797 of 1996

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JUDGMENT

Dated:5-6-2007